

The following is a request for compensation totalling \$2109.70, as I believe my working as an unpaid intern actually qualifies as employment under the ESA.

I worked as an unpaid intern with Bell Mobility's Professional Management Program (PMP) in the Analytics Department for five weeks (from Monday April 9 to Thursday May 10, 2012). PMP mostly hires unpaid interns, and is supervised by the Market Analysis and Intelligence (MAI) department of Bell Mobility. I do not know whether PMP is a unit within Bell Mobility, or a separate corporate entity.

I feel that I should be paid for the labour I performed for PMP. I am requesting compensation for the hours I worked from April 9, 2012 to May 4, 2012. The calculation is included at the end of this document. I am not seeking compensation for my final week as much of this time was spent with my employer addressing the issue of unpaid labour.

Under subsection 1(2) of the ESA, a person receiving training is considered an employee if at least one of six particular conditions is not met. I believe that in my time at the PMP, at least three conditions were not satisfied.

Therefore I believe I was an employee of PMP, and hence am entitled to wages for my labour.

Below are examples explaining why I believe the conditions do not hold:

1. The training is similar to that which is given in a vocational school

I was trained for 10 minutes by another unpaid intern to do video transcription, and the task of transcribing video clips took a total of 5 hours.

I was trained to identify and tally telecom ads in online media; these tasks took 1-2 hours daily. After collecting data by refreshing various web-pages multiple times and browsing through e-newspapers, the data would be entered in a database by filling out a form with preset fields.

In 15 minutes I was instructed how to use SQL to complete a task that needed to be done immediately. Given a list of hundreds of entries, I was to type keywords into given code, then list findings for each entry. This menial task took over 5 hours straight to complete.

A fellow associate and I were given brief instruction on a research report to reproduce. No detailed instruction on finding primary data sources and reproducing graphs was given; the only resource given was a package that explained Bell's formatting standards.

After 4 weeks in the program, I had still not attended any workshops (most led by unpaid interns) that PMP offers regularly, but I was asked to facilitate one with another associate.

I was invited to one workshop during my third week, but had been pulled out as there was more important work that needed to be done (SQL task mentioned earlier). This also gives the impression that the work is for the benefit for the employer, otherwise deadlines would not be so much of an issue.

Only after I brought up the ES claims form with my employer that two days later I was last minute invited to a workshop that was running that afternoon.

2. The training is for the benefit of the individual.

On three occasions I was given a list of numbers and asked to do phone call surveys, the only training I was given was a short briefing on phone call etiquette

I was given the hard copy of the survey and the computer-submit copy, and had to manually verify field by field that the information matched. Similarly after the SQL queries I had to check another associate's completed list and verify each entry.

I was given a menial task of word matching which took over 8 hours. I had to check if two columns matched in a table of 3000 entries.

3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained

I was told by a senior associate that the work done in the analytics department accounts for more than 90% of PMP's revenues.

The report to be updated mentioned earlier, was for Bell staff to present at a meeting. The original report was completed by both Bell staff and interns.

The data collected from phone call surveys and the daily ad collection is used for reports by the Bell staff.

I was told that one of the phone call surveys we did was previously done by paid Bell employees. It was passed on to the unpaid interns to take on the project for a second attempt.

Calculations:

Regular hours: 169:56

Overtime hours: 18:39

$169:56 * 10.25 + 18:39 * 1.5 * 10.25 = 2028.56$

Plus 4% vacation pay: 2109.70

Below are some of my additional thoughts about the program as a whole:

In the program there are approximately 90 unpaid associates and 20 paid staff.

Management has a habit of coercing the staff in our department to stay beyond core hours on a regular basis by stressing important deadlines that need to be met for Bell executives. I signed an agreement to work 9 – 5pm, and extended hours of 5 -7pm but have stayed past 10pm on numerous occasions. Also, they do not enforce the 11 hour rule between shifts and I have also come into work without having the legally required 11 hour gap. Also, there was a lack of project management as on several occasions I would have tasks assigned close to or after 5pm that needed to be done that same day.

We are given dinners if we stay past 9pm, and cab ride reimbursement if we stay really late. I took a cab ride home once, and was reimbursed in cash with no receipt or written record of the payment.

After speaking with my superiors about the ESA, the senior director tried emotionally to convince me not to submit this claim form; and tried to convince my department that the program was in compliance with the ESA. The senior director had a paid staff come in to give a testimonial in the program, and after she left he asked me, will happen to her if you submit this claims form, she needs the position to secure her citizenship. Within two days of bringing up the issue of compliance with the ESA, there were changes in the operation of the program to make it seem more educational. The next morning I was approached by an associate who had been told to invite me to a workshop even though the invites had been sent a long while back, apparently there were two open spots and I was one of the associates chosen to be invited.

Friday May 11 I realized how emotionally and mentally overwhelmed from the entire week that I made the decision to resign via email.



Human Resources
Development Canada

Labour Branch

Développement des
ressources humaines Canada

Direction générale
du travail

APPENDIX A

COMPLAINT REGISTRATION

Canada Labour Code, Part III — Labour Standards
Fair Wages and Hours of Labour Act

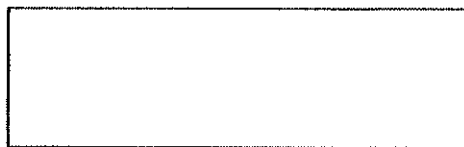
Please Print Clearly — Complete Both Sides

Submit to:
HRDC — Labour Program

(aussi disponible en français)

SECTION A INFORMATION ABOUT YOU					
☐ Mr. ☐ Miss	☐ Mrs. ☒ Ms	Last Name Patel		First or Given Name Jainna	Middle Initial
Mailing Address [REDACTED]		City and Province [REDACTED]		Postal Code [REDACTED]	Social Insurance Number [REDACTED]
Residence Telephone No. () [REDACTED]		Telephone No. for messages () [REDACTED]		Fax No. () N/A	E-Mail [REDACTED]
SECTION B INFORMATION ABOUT YOUR EMPLOYER					
Name of Employer, Company or Business Bell Mobility Inc.					
Street Address and/or Employer's Mailing Address 5099 Creekbank Road		City and Province Mississauga, ON		Postal Code L4W 5N2	
Telephone No. ()		Fax No. ()		Type of Business Telecommunications	
Name of Supervisor Henry Mar			Telephone No. () [REDACTED] and () [REDACTED]		
Office Address (if different from Employer's Address above) N/A					
Is employer still in business?					☒ Yes ☐ No
SECTION C YOUR WORK HISTORY WITH THIS EMPLOYER					
Job Title		First Day Worked for this Employer April 9, 2012		Last Day worked for this Employer May 10, 2012	
☐ Still Employed		☒ Quit		☐ Fired ☐ Laid off	
Salary/rate of pay \$ 10.25		Specify if Paid by the Hour, Week, Month, etc. N/A			
If paid by the Mile or by a Percentage of the Load, Commission, etc., please describe N/A					
Number of Days Worked per week		Number of Hours Worked per week		Other	
Type of Pay Period ☐ Daily ☐ Weekly ☐ Every Two Weeks ☐ Twice a Month ☐ Monthly					
☒ Other (please specify) 3rd schedule 1.				Where does your Employer Bank?	
Do you have relevant records to support your complaint?		☒ Yes ☐ No If yes, list records and attach photocopies to this form			
SECTION D					
Do you want your name to remain confidential?				☐ Yes ☒ No	Initial

SECTION E NATURE OF YOUR COMPLAINT (MONETARY COMPLAINT)			
	Date	Date	Estimated Amount Owed
Regular Wages	From: April 9, 2012	To: May 10, 2012	\$ 2065.38
Overtime	From: April 9, 2012	To: May 10, 2012	\$ 282.75
Annual Vacation Pay	From: April 9, 2012	To: May 10, 2012	\$ 93.93
Fair Wages - Construction	From:	To:	
General (Statutory) Holiday Pay	Specify Dates		
Deductions from Wages	Specify		
Severance/Termination Pay			
Estimated Total			
Other (please specify)			
SECTION F UNJUST DISMISSAL			
N/A			
SECTION G NATURE OF YOUR COMPLAINT (NON MONETARY COMPLAINT)			
N/A			
SECTION H DETAILS OF COMPLAINT (ATTACH ADDITIONAL PAGES IF REQUIRED)			
See schedule 1.			
If covered by a Union Contract, what is the name of the union?		Union Representative	Telephone No.
N/A		N/A	N/A
Was this Complaint made to another Government Representative?			☒ Yes ☐ No
If yes, specify		Date	
Employment Standards Branch - Ministry of Labour		May 29, 2012	
I certify that all information provided is true and correct to the best of my knowledge.			
Signature		Date	
FOR OFFICE USE ONLY			
Date received	Received by	☐ Mail	☐ Phone ☐ Fax ☐ Interview



Schedule 1

Overview

1. Jainna Patel "the Applicant" worked at Professional Management Program ("PMP") in the Analytics Department on Bell Mobility Inc.'s ("Bell") Mississauga corporate campus from April 9, 2012 to May 10, 2012.
2. The PMP is program offered by Bell to post-secondary students, recent post-secondary graduates, and recent immigrants under the auspices of an "unpaid developmental opportunity".
3. The Applicant was not paid for her labour as she was led to believe that she would be entering a training program in a volunteer capacity; however, once the Applicant was in the PMP she was offered very little training and was forced to work in the Analytics department.
4. The Applicant worked in the PMP's Analytics department under the supervision of Bell staff from the Market Analysis and Intelligence department and other PMP interns. The Applicant was performing work for Bell and a *de facto* employment was established.
5. The structure of the PMP is designed with the intent of mischief aimed at subverting and undermining the social minima and labour standards enumerated under the *Canada Labour Code* ("the *CLC*").

Legal Claim

6. There are no exclusions that apply to her under the *CLC* which would disentitle the Applicant to remuneration for the hours that she worked.
7. The Applicant submits that she was an employee of Bell doing work who was misclassified as an "intern" contrary to the provisions of the *CLC*. The Applicant submits that she is entitled to the minimum wage under s. 178 of the *CLC* and that she was not paid for the time she spent working at Bell. Under s. 168 of the *CLC* there is a prohibition on "contracting out" of the minimum labour standards contained therein.

Amount Claimed

8. The Applicant worked 206.74 hours from April 9, 2012 to May 10, 2012. The specific breakdown is: 201.56 hours at a rate of \$10.25 per hour for \$2065.38; 18.39 hours at the overtime rate of time and a half for \$282.75; and, four percent vacation pay on the aforementioned amounts totalling \$93.93. The total amount claimed is \$2442.06.

Duties Performed

9. The Applicant fulfilled the following duties throughout her time at the PMP: transcribing video clips; data mining; conducting phone call surveys; reviewing databases for incorrect entries; online environmental scans to identify and tally commercial advertisements from competitors; filling out databases; writing research reports; collected data on commercial activity; conducting training sessions for other workers in the PMP on marketing strategies; and, collecting data on mobile application usage.

10. The Applicant underwent little, if any, training while in the PMP. The vast majority of her time was spent completing work for Bell.

Case Law and Policy Interpretation

11. Under the CLC "work" is given a broad interpretation. Under the document "Hours of Work - 802-1-IPG-002", prepared by the Department of Human Resources and Skills Development Canada's Labour Program, there is commentary on unpaid training programs.

12. The leading decision whether unpaid training is considered "work" under the CLC is *Gray Line of Canada v. Burke* (the "*Burke* decision"). This case considered whether a course offered by the employer was considered "work"; the course involved practicing providing tour commentary while driving. Essentially, the first course involved driving, communications skills, and learning trivia that would be useful in giving tours. The panel stated that the "modern tendency in the interpretation of statutes, particularly in the field of labour and employment, is to take a broad purposive approach that may well result in a person being classified as an employee..." The panel reviews the various common-law tests for employment, these are: the control test; the integration test; the four-fold test; and the all factors test. After reviewing the tests, the panel states that utilizing these tests may defeat the intent of the legislature, at paragraph 42 it reads: "...[t]he central purpose of employment standards legislation is to prevent exploitation of workers by ensuring that they receive at least basic standards of compensation and conditions of employment. The modern approach to the interpretation of such statutes is to adopt such broad liberal interpretations as will best effect the purposes of the legislation. That may involve looking behind the language of a contract to economic realities, to substance rather than form...".

13. At paragraph 44 of the *Burke* decision, the panel states: "[n]or can an employer escape liability on the basis that it has not yet entered into a formal contract of employment, if the evidence indicates that an employment relationship exists in fact." The factors that the panel states must be considered are: any contract signed; the economic realities; the presence of a dress code; whether that employee is subject to discipline; whether attendance is mandatory; ownership of tools; who bears the operating costs; what documentation has been provided; whether the training being voluntarily undertaken by the employee as preparation for another job; the duration of the training; and the nature of the training. At paragraph 55, the panel states that "the answer to the question whether a job applicant/trainee has become an employee may

depend not upon a single factor but upon an assessment of all the circumstances and the application of a composite test that goes beyond form to take account of economic realities, with a view to reaching a conclusion that would best effect the protective purposes of the legislation." After an exhaustive examination, the panel ruled that the training was not considered work under the CLC as it resembled training courses that were available commercially.

14. Please see these additional case law that consider the nexus between unpaid work and the minimum standards under the CLC: *N. Yanke Transfer Ltd. v. Caldwell*, [1995] C.L.A.D. No. 525 (Steele); *Nelson v. LFC Flight Centre Ltd.*, [1998] C.L.A.D. No. 560 (Kubara); *Daswood Lumber Co. v. Vos*, [2000] C.L.A.D. No. 354 (Hall); *Warbon Transport Inc. v. Fieden*, [2001] C.L.A.D. No. 408; *Greig v. British Columbia Maritime Employers' Assn.*, [2002] C.L.A.D. No. 345 (Blaxland); *Aujla v. APNA Sangeet Radio Network Inc.*, [2003] C.L.A.D. No. 179; *Dabo v. Kocsis Transport Ltd.*, [2005] C.L.A.D. No. 550 (Denysiuk); *Bray v. Dufferin Communications Inc.*, [2006] C.L.A.D. No. 237 (Hartman); *Dryden v. Harmony Broadcasting Corp.*, [2007] C.L.A.D. No. 462; and, *Driver-Man Inc. v. O'Neil*, [2012] C.L.A.D. No. 351.

Requested Remedies

15. The Applicant requests the following: an order stating that Bell must pay back wages in the amount \$2442.06 and that indicates Bell breached the minimum labour standards under the CLC.



May 14, 2013

Assignment No.: M10C07553

BELL MOBILITY INC.
5099 Creekbank Road
Mississauga, Ontario
L4W 5N5

Dear Mr. Henry Mar:

Subject: Canada Labour Code, Part III (Labour Standards)

The Labour Program is in receipt of a formal complaint filed against BELL MOBILITY INC. by Jainna Patel alleging that she did not receive wages, payment for overtime hours worked, and annual vacation to which she was entitled under the provisions of the *Canada Labour Code*, Part III.

With reference to Jainna Patel's allegations, the *Canada Labour Code*, Part III, provides that:

247. Except as otherwise provided by or under this Part, an employer shall

- (a) pay to any employee any wages to which the employee is entitled on the regular pay-day of the employee as established by the practice of the employer; and
- (b) pay any wages or other amounts to which the employee is entitled under this Part within thirty days from the time when the entitlement to the wages or other amounts arose.

178. (1) Except as otherwise provided by or under this Division, an employer shall pay to each employee a wage at a rate

(a) not less than the minimum hourly rate fixed, from time to time, by or under an Act of the legislature of the province where the employee is usually employed and that is generally applicable regardless of occupation, status or work experience; or

(b) where the wages of the employee are paid on any basis of time other than hourly, not less than the equivalent of the rate under paragraph (a) for the time worked by the employee.

188. When an employee ceases to be employed, the employer shall forthwith pay to the employee

- (a) any vacation pay then owing by the employer to the employee under this Division in respect of any prior completed year of employment; and

(b) four per cent or, if the employee has completed six consecutive years of employment by one employer, six per cent of the wages of the employee during any part of the completed portion of his year of employment in respect of which vacation pay has not been paid to the employee.

Definition of "wages"

166. In this part "wages" includes every form of remuneration for work performed but does not include tips and other gratuities"

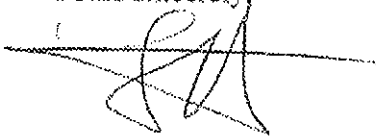
Please review the allegations and, if you agree with the complainant's position, forward any monies owing directly to Jainna Patel, [REDACTED], [REDACTED] with a copy of your calculations and confirmation of payment to this office by May 31, 2013. Alternatively, payment may be forwarded to this office by certified cheque payable to the Receiver General for Canada by May 31, 2013.

You are reminded that section 249.(4) of Part III of the *Canada Labour Code* states:
"The person in charge of any federal work, undertaking or business and every person employed thereon or in connection with the operation thereof shall give an inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Part or the regulations."

If you disagree with the complainant's allegations, please submit your reasons, with supporting evidence, by **May 31, 2013**.

If you have any questions or require further information, please feel free to contact me at (416) 973-4506.

Yours sincerely,



Leila Handanovic, Inspector
4900 Yonge Street, Penthouse
Toronto, ON M2N 6A4
Telephone Number: (416) 973-4506
Fax Number: (416) 954-5911
E-mail: leila.handanovic@labour-travail.gc.ca

Att. Complaint Registration Form
c.c. Jainna Patel